

**PT 98-88**

**Tax Type: PROPERTY TAX**

**Issue: Charitable Ownership/Use**

**STATE OF ILLINOIS  
DEPARTMENT OF REVENUE  
OFFICE OF ADMINISTRATIVE HEARINGS  
CHICAGO, ILLINOIS**

**ROGERS PARK/  
WESTRIDGE  
HISTORICAL SOCIETY,  
APPLICANT**

**v.**

**STATE OF ILLINOIS  
DEPARTMENT OF REVENUE**

**96-16-0785**

**Real Estate Exemption  
for 1996 Tax Year**

**P.I.N: 10-36-431-020**

**Cook County Parcel**

**Alan I. Marcus  
Administrative Law Judge**

**RECOMMENDATION FOR DISPOSITION**

**APPEARANCES:** Mr. Timothy J. Hammersmith of Amari & Locallo appeared on behalf of the Rogers Park/Westridge Historical Society, Inc.

**SYNOPSIS:** These proceedings raise the following issues: (1) Did the Illinois Department Of Revenue (hereinafter the "Department") incorrectly apply Section 200/15-65(f) of the Property Tax Code, 35 **ILCS** 200/1 *et seq*, 200/15-65(f); (2) does Rogers Park/Westridge Historical Society, Inc. (hereinafter the "Society" or the "applicant") qualify as an "institution of public charity" within the meaning of 35 **ILCS** 200/15-65;<sup>1</sup> and (3) should specifically

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1. In People ex. rel. Bracher v. Salvation Army, 305 Ill. 545 (1922), the Illinois Supreme Court held that the issue of property tax exemption necessarily depends on the statutory provisions in force during the time for which the exemption is claimed. This applicant seeks

identifiable parts of real estate identified by Cook County Parcel Index Number 10-36-431-020 (hereinafter the "subject parcel" or the "subject property") be exempt from 1996 real estate taxes under 35 ILCS 200/15-65, wherein all property owned by "institutions of public charity" is exempted from real estate taxation, provided that said property is "actually and exclusively used for charitable or beneficent purposes, and not leased or otherwise used with a view to profit."

The controversy arises as follows:

Applicant filed a Real Estate Exemption Complaint with the Cook County Board of (Tax) Appeals (hereinafter the "Board") on October 11, 1996. (Dept. Group. Ex. No. 1, Doc. A). The Board reviewed applicant's complaint and thereafter recommended to the Illinois Department of Revenue (hereinafter the "Department") that the a full year's exemption be granted for part of the subject property. (Dept. Gr. Ex. No. 1, Doc. B).

The Department subsequently rejected this recommendation via a determination dated August 14, 1997. Said determination found that:

APPLICANT FAILED TO SUBMIT EVIDENCE OF COMPLIANCE WITH SUBSECTION (F) OF SECTION 15-65 (35 ILCS 200/15-65(F)) WHICH REQUIRES ALL TAXING DISTRICTS WITHIN WHICH THE PROPERTY IS SITUATED TO ADOPT A RESOLUTION FINDING THAT THE HISTORICAL SOCIETY IS A CHARITABLE ORGANIZATION USING THE PROPERTY EXCLUSIVELY FOR CHARITABLE PURPOSES.

(Dept. Ex. No. 2)

Applicant subsequently filed a timely request for hearing as to this denial (Dept. Ex. No. 3) and thereafter presented evidence at a formal administrative hearing. Following submission of all evidence and a careful review of the record, I recommend that the Department's initial

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exemption from 1996 real estate taxes. Therefore, the applicable provisions are those found in the Property Tax Code, 35 ILCS 200/1 *et seq.*

determination in this matter be: (1) reversed as to the part based on an erroneous application of Public Act 89-426; (2) modified to reflect that 52% of the building located on the subject property, and a corresponding amount of its underlying land, qualifies for exemption from 1996 real estate taxes under 35 ILCS 200/15-65.

**FINDINGS OF FACT:**

A. Preliminary Considerations and Description of the Subject Property

1. The Department's jurisdiction over this matter and its position therein, namely that applicant allegedly failed to establish compliance with Public Act 89-426, is established by the admission into evidence of Dept. Ex. No. 2.
2. The subject property, which applicant acquired ownership of via a warranty deed dated October 30, 1995, is located at 6424 N. Western Avenue, Chicago, IL 60645-5422 and improved with a 7,868 square foot building. Dept. Group Ex. No. 1, Doc. B; Applicant Ex. No. 10.
3. The building contains two floors and a partial basement. Each floor occupies approximately 4,000 square feet. The basement fills 1,200 square feet. Applicant Ex. No. 15; Tr. p. 30.
4. The first floor and basement were divided into the following areas and used for the following purposes during the 1996 assessment year:<sup>2</sup>

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2. For a schematic drawing showing the exact layout of the first and second floors, *see*, Applicant Ex. No. 15.

AREA	SQUARE FOOTAGE (ROUNDED)	USE
South Hallway - Front Area	183	Displays of Historical Paraphernalia Associated with Applicant's Museum
Studio 1, A & B	227	Leased to Two Separate Professional Artists <sup>3</sup> For Use as Art Studios
Studio 2, Room 1	342	Museum Proper
Studio 2, Room 2	238	Museum Proper
Studio 2, Room 3	160	Educational Resource Center Connected with Applicant's Museum
Window Display	31	Displays of Historical Paraphernalia Associated with Applicant's Museum
Office (Studio 6)	336	Office Uses Tied To Administering Programs Associated with Applicant's Museum
Archival Room (Studio 3)	144	Uses Divided Between: (1) Workshop Area for Applicant's Museum; And (2) Leasing Space to Non-Profit Organization <sup>4</sup>
South Hallway Back Area, First Part	106	Displays of Historical Paraphernalia Associated with Applicant's Museum
South Hall- Back Area, Second Part	16	Same as Above
Back Room, First Part	152	Storage and Some Mechanical Equipment Used by Applicant
Back Room, Second Part	31	Heating Unit and Utility Room Used by Applicant

3. For details on the terms and conditions under which this and the other studios were leased, *see*, Finding of Fact 19, *infra* at p. 12.

4. The record fails to clearly disclose whether the applicant or the lessee was the primary user of this space. *See*, Applicant Ex. No.14A (containing lease on Studio 3) and Tr. pp. 48-49 (testimony as to applicant's use of Studio 3).

<b>AREA (CONT'D.)</b>	<b>SQUARE FOOTAGE (Rounded)</b>	<b>USE</b>
Bathroom 2	18	Bathroom Facilities
Studio 4	303	Leased to Professional Artist for Studio Purposes
Studio 5	266	Leased to Professional Artist for Studio Purposes
North Entrance Hall	201	Displays of Historical Paraphernalia Associated with Applicant's Museum
North Hallway	308	Same as Above
Under North Stairway	32	Display/Storage of Historical Paraphernalia Associated with Applicant's Museum
Studio 7	276	Leased to Professional Artist for Studio Purpose
<b>Total First Floor</b>	<b>3,388</b>	
<b>Basement</b>	<b>1,200</b>	Other Mechanical Equipment and Storage Used by Applicant
<b>COMBINED SQUARE FOOTAGE OF FIRST FLOOR AND BASEMENT</b>	<b>4,588</b>	

Applicant Ex. No. 13, Tr. pp. 47-54.

5. First floor rentals were as follows:

<b>AREA</b>	<b>TENANT</b>	<b>MONTHLY RENTAL</b>	<b>LEASE TERM</b>	<b>TOTAL YEARLY RENT</b>
Studio 1-A	Artist	\$96.25	1 yr, starting 1/1/96	\$ 1,155.00
Studio 1-B	Artist	Same	Same	\$ 1,155.00
Studio 3	Non-Profit Organization	\$165.00	Same	\$ 1,980.00
Studio 4	Artist	\$220.00	Same	\$ 2,640.00
Studio 5	Artist	\$300.00	6 mos, starting 6/1/96	\$1,800.00
Studio 7	Artist	\$275.00	5 mos, starting 7/1/96	\$3,300.00
<b>TOTAL</b>				<b>\$12,030.00</b>

Applicant Ex. Nos. 14A, 15.

6. The second floor was divided into the following areas and used for the following purposes during the 1996 assessment year:

AREA	SQUARE FOOTAGE (Rounded)	USE
Gallery	456	Society Meetings and Photographic Displays Connected with Applicant's Museum
Studio A	490	Leased to Professional Artist for Studio Purposes
Studio B	388	Same as Above
Studio C	504	Same as Above
Studio D-1	260	Same as Above
Studio D-2	246	Same as Above
Studio E, Part 1	322	Same as Above
Studio E, Part 2	44	Same as Above
Studio F	313	Same as Above
North Hallway	114	Displays of Historical Paraphernalia Associated with Applicant's Museum
Storage Room	66	Storage of Historical Paraphernalia Associated with Applicant's Museum
Cleanup Room	25	Utility Closet for 2 <sup>nd</sup> Floor Maintenance
Bathroom 3	25	Restroom Facilities
Bathroom 4	27	Same As Above
<b>TOTAL</b>	<b>3,280</b>	

Applicant Ex. No. 13; Tr. pp. 54-58.

7. Second floor rentals were as follows:

AREA	TENANT	MONTHLY RENTAL	LEASE TERM	TOTAL YEARLY RENT
Studio A	Artist	\$347.50	1 year, starting 1/1/96	\$4,170.00
Studio B	Same	\$300.00	Same	\$3,600.00
Studio C	Same	\$325.00	Same	\$3,900.00
Studio D-1	Same	\$85.00	Same	\$1,020.00
Studio D-1	Same	\$85.00	Same	\$1,020.00
Studio D-2	Same	\$150.00	Same	\$1,800.00
Studio E, Part 1 & 2	Same	\$275.00	Six Months, Starting 6/1/96	\$1,650.00
Studio F	Same	\$250.00	1 year, starting 1/1/96	\$3,000.00
<b>TOTALS</b>				<b>\$15,994.17</b>

Applicant Ex. Nos. 14B, 15.

B. Applicant's Organizational And Financial Structure

8. Applicant was originally incorporated as the "Rogers Park Historical Society," under the "General Not For Profit Corporation Act of Illinois," on March 1, 1976. Its corporate name was subsequently changed to the "Rogers Park/Westridge Historical Society" via a Reinstatement filed with the Office of the Secretary of State on April 1, 1993. Applicant Ex. Nos. 1, 2.
9. Applicant's constitution provides, *inter alia*, that its corporate purposes are to: (1) educate, perpetuate, foster and preserve the history of the people and the area known as Rogers Park and Westridge, located in the City of Chicago, by the collection, preservation, and dissemination of historical data and resources to the general public; and (2) operate exclusively for charitable, educational, religious, or scientific purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1954, as revised. Applicant Ex. No. 4.
10. Applicant's constitution further provides, *inter alia*, that: (1) membership may be granted to any individual, family or group interested in the local history of the Rogers Park/Westridge Community; (2) applicant's day-to-day business affairs, including museum operations and fund-raising, shall be carried on by a Board of Directors; and (3) no part of applicant's net earnings (if any) shall inure to the benefit of, or be distributable to, its members, trustees, officers or other private persons except that the Society shall be authorized and empowered to pay reasonable compensation for services rendered. *Id.*

11. The Internal Revenue Service has recognized that LLLI is exempt from federal income tax because it qualifies as an organization described in Section 501(c)(3) of the Internal Revenue Code Applicant Ex. No. 5.

12. The Society has no capital stock or shareholders. Its federal return (IRS form 990) indicates that applicant's sources of revenue for the 1996 assessment year (January 1, 1996 through December 31, 1996) were as follows:

<b>SOURCE</b>	<b>AMOUNT</b>	<b>% OF TOTAL<sup>5</sup></b>
Direct Public Support	\$35,037.00	75%
Membership Dues & Assessments	\$ 5,670.00	12%
Interest on Savings & Temporary Cash Investments	\$ 1,448.00	3%
Dividends & Interest From Securities	\$ 373.00	<1%
Special Events & Activities		
Gross Revenue	\$6,933.00	
Less Direct Expenses Other Than Fundraising Expenses	-\$2,966.00	
Equals Net Income From Special Events	\$4,027.00	9%
<b>Total Gross Revenues Prior To Subtractions From Revenue Due To Net Losses</b>	<b>\$46,555.00</b>	

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5. All percentages shown herein are approximations derived by dividing the amounts shown in the relevant category by the total revenues shown on the last line of the second column. For example,  $\$35,037/\$46,555.00=.7526$  (rounded four places past the decimal) or 75%.

It should also be noted that the \$46,555.00 figure represents gross total revenues prior to subtractions from revenue dues to net losses, which I have elected to show separately in order to present a clearer picture of applicant's financial structure.



<b>SOURCE (CONT'D)</b>	<b>AMOUNT</b>	<b>% OF TOTAL</b>
<b>Subtractions from Gross Revenue Due to Net Losses</b>		
Rentals		
Gross Rents	\$40,932.00	
Less Rental Expenses	- \$55,751.00	
Equals Net Loss From Rentals	(\$14,819.00)	
Gross Amount from Sale of Assets Other than Inventory		
Securities	\$67,137.00	
Less Cost or Other Basis & Sales Expenses	-\$67,478.00	
Net Loss	(\$ 341.00)	
<b>Total Net Losses</b>	<b>(\$15,160.00)</b>	33% <sup>6</sup>
<b>Reconciliation:</b>		
<b>Total Gross Revenues</b>	<b>\$46,555.00</b>	
<b>Total Net Losses</b>	<b>(\$15,160.00)</b>	
<b>TOTAL NET REVENUES</b>	<b>\$31,395.00</b>	

Applicant Ex. No. 7

13. Applicant's Expenses for the same period were as follows:

<b>EXPENSE</b>	<b>AMOUNT</b>	<b>% OF TOTAL</b>
<b>Program Services</b>		
Occupancy	\$5,280.00	
Museum Acquisitions	\$ 482.00	
<b>Total Program Services</b>	<b>\$5,762.00</b>	<b>17%</b>

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6.  $15,160.00 / \$46,555.00 = .3256$  (rounded) or 33%.

<b>EXPENSE (CONT'D.)</b>	<b>AMOUNT</b>	<b>% OF TOTAL</b>
<b>Management &amp; General</b>		
Compensation of Officers Directors, Etc.	\$11,435.00	
Accounting Fees	\$ 350.00	
Supplies	\$ 740.00	
Postage & Shipping	\$ 1,059.00	
Occupancy	\$ 3,960.00	
Equipment Rental & Maintenance	\$ 1,480.00	
Printing & Publications	\$ 65.00	
Insurance	\$ 797.00	
Miscellaneous	\$ 410.00	
Dues	\$ 85.00	
<b>Total Management &amp; General</b>	<b>\$22,421.00</b>	<b>66%</b>
<b>Fundraising</b>		
Printing & Publications	\$3,043.00	
Public Relations	\$2,600.00	
<b>Total Fundraising</b>	<b>\$5,643.00</b>	<b>17%</b>
<b>TOTAL EXPENSES</b>	<b>\$33,826.00</b>	
<b>Reconciliation:</b>		
<b>Total Net Revenue</b>	<b>\$31,395.00</b>	
<b>Less Total Expenses</b>	<b>-\$33,826.00</b>	
<b>Deficit</b>	<b>(2,431.00)</b>	

*Id.*

C. Applicant's Operations and Use Issues

14. The subject property was used for two basic purposes throughout the 1996 assessment year. One use was connected with a historical museum that applicant operated on parts of the subject property. The other was associated with studios that applicant rents to practicing artists. Applicant Ex. Nos. 13, 15. Applicant Group Ex. Nos. 14A, 14B; Tr. p. 41.
15. The museum contains artifacts from the Rogers Park and Westridge areas. It is open Mondays, Wednesdays, and Fridays between 10:00 a.m. and 4:00 p.m. and Thursday evenings from 7:00 p.m. until 9:00 p.m. Applicant Ex. No. 8; Tr. pp. 47-55.
16. The museum is open to the public free of charge, although applicant requests that patrons place any contributions they wish to make into a donation box that is located in the main foyer. Those who decline to make contributions are not refused admission under any circumstances. Applicant Ex. No. 8; Tr. pp. 45-46.
17. Applicant also solicits membership dues from those who wish to join the Society. It does, however, waive these payments for those who want to become members but are unable to pay. Tr. p. 28.
18. The museum also features an educational resource center where patrons can look at zone maps that show the history of various neighborhoods in the Rogers Park/Westridge Area. Tr. p. 51
19. The studios were rented pursuant to leases which provide, *inter alia*, that: (1) the tenants were to pay specifically identified sums certain as rent;<sup>7</sup> (2) all rentals were payable on a monthly basis and due in advance; (3) if the lessees failed to pay rent at the times, places and manners specified in the leases, and if such rent shall have

remained unpaid for a period of five days after the date on which the rent was due, applicant (as lessor) was authorized to declare the term ended; (4) in the event of such termination, the lessees expressly waived all right or rights to any notice or demand under any statute of the state relative to: (a) forcible entry or detainer; or (b) landlord and tenant, and further, agreed that the lessor, his agents or assigns were authorized to begin suit for possession or rent without notice or demand; and (5) in the event that the lessor, his successors, attorneys or assigns desired to regain possession of the demised premises, the lessor had the option of doing so upon giving the occupying tenant thirty days notice of the lessor's election to exercise such option. Applicant Ex. Nos. 14A, 14B.

#### **CONCLUSIONS OF LAW:**

An examination of the record established this applicant has demonstrated by the presentation of testimony or through exhibits or argument, evidence sufficient to warrant a partial exemption from 1996 real estate taxes. Accordingly, under the reasoning given below, the determination by the Department that the subject parcel does not qualify for exemption under 35 ILCS 200/15-65 should be partially reversed. In support thereof, I make the following conclusions:

Article IX, Section 6 of the Illinois Constitution of 1970 provides as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

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7. For exact rental amounts and other details about the specific terms of each lease, *see*, Applicant Ex. Nos. 14A, 14B.

The power of the General Assembly granted by the Illinois Constitution operates as a limit on the power of the General Assembly to exempt property from taxation. The General Assembly may not broaden or enlarge the tax exemptions permitted by the Constitution or grant exemptions other than those authorized by the Constitution. Board of Certified Safety Professionals, Inc. v. Johnson, 112 Ill.2d 542 (1986). Furthermore, Article IX, Section 6 is not a self-executing provision. Rather, it merely grants authority to the General Assembly to confer tax exemptions within the limitations imposed by the Constitution. Locust Grove Cemetery Association of Philo v. Rose, 16 Ill.2d 132 (1959). Moreover, the General Assembly is not constitutionally required to exempt any property from taxation and may place restrictions or limitations on those exemptions it chooses to grant. Village of Oak Park v. Rosewell, 115 Ill. App.3d 497 (1st Dist. 1983).

In furtherance of its Constitutional mandate, the General Assembly enacted the Property Tax Code, 35 ILCS 200/1-3 *et seq.* The provisions of that statute which govern disposition of the present matter are contained in the following excerpt from Section 200/15-65:

All property of the following is exempt when actually and exclusively used for charitable or beneficent purposes, and not leased or otherwise used with a view to profit:

(a) institutions of public charity[.]

35 ILCS 200/15-65.

It is well established in Illinois that a statute exempting property or an entity from taxation must be strictly construed against exemption, with all facts construed and debatable questions resolved in favor of taxation. People Ex Rel. Nordland v. Home for the Aged, 40 Ill.2d 91 (1968); Gas Research Institute v. Department of Revenue, 154 Ill. App.3d 430 (1st Dist. 1987). Based on these rules of construction, Illinois courts have placed the burden of proof on the party seeking exemption, and, have required such party to prove, by clear and convincing evidence, that it falls within the appropriate statutory exemption. Immanuel Evangelical Lutheran Church of Springfield v. Department of Revenue, 267 Ill. App.3d 678 (4th Dist. 1994).

This case is somewhat unique in that the Department's denial did not rest on applicant's failure to prove that it fell within the appropriate statutory exemption, which pertains to "institutions of public charity." Rather, said denial was based solely on the incorrect application of Public Act 89-426, now codified at 35 ILCS 200/15-65(f). That provision, as amended by Public Act 89-626, provides for exemption of:

An historical society, but only if all taxing districts within which the property is situated have adopted a resolution finding that the society is a charitable organization using the property exclusively for charitable purposes.

Public Act 89-626, effective August 9, 1996.<sup>8</sup>

This applicant undoubtedly qualifies as "an historical society" within the above legislation. Thus, cursory examination of its terms could lead one to conclude (as did the Department) that applicant is subject to the resolution requirements contained therein.

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8 Prior to the amendment, the above provision stated that:

An historical society, for purposes of this Section, shall be deemed a charitable organization eligible for a property tax exemption under this Section only if all taxing districts within which the property is situated have adopted a resolution finding that the society is a charitable organization using the property exclusively for charitable purposes.

Public Act 89-426, effective June 1, 1996.

The June 1, 1996 effective date is critical herein because it proves that Public Act 89-462 did not become effective until six months *after* applicant's liability for 1996 real estate taxes became fixed on January 1, 1996. Therefore, the Society's exemption claim for that assessment year must be measured against the omnibus provisions set forth in Section 200/15-65, which were the only relevant statutory provisions applicable on the date when its liability for such taxes became fixed. *See*, discussions of People ex. rel. Bracher v. Salvation Army, 305 Ill. 545 (1922), *supra* at p. 1; Forest Preserve of DuPage County v. Department of Revenue, et al, 266 Ill. App.3d 264, 274 (2<sup>nd</sup> Dist. 1994), *infra*.

However, the status of the property for taxation and the liability to taxation is fixed on January 1 of each assessment year. Forest Preserve of DuPage County v. Department of Revenue, et al, 266 Ill. App.3d 264, 274 (2<sup>nd</sup> Dist. 1994) (citing People ex. rel. Kassabaum v. Hopkins, 106 Ill.2d 473, 476-77 (1985)). The practical effect of this principle is, for present purposes, that the Department cannot require this or any other applicant to establish conformity with statutory exemption requirements that are not in effect on January 1 of the tax year for which exemption is being sought. Public Act 89-426 (as amended) did not become effective until August 9, 1996. Therefore, the Department cannot require applicants to establish conformity with the resolution requirements contained therein unless they are seeking exemption for tax years beginning on or after January 1, 1997.

This applicant is seeking exemption from 1996 real estate taxes. Hence, the Department should not have imposed the aforementioned resolution requirements herein in this instance. Therefore, the Department's determination requiring the Society to establish conformity with said requirements should be reversed.

Nonetheless, applicant is not relieved of its burden of proof with respect to the substantive elements of its exemption claim. This burden requires applicant to present clear and convincing evidence proving that the subject property was: (1) owned by an "institution of public charity[;]" and, (2) "actually and exclusively used for charitable or beneficent purposes," during the 1996 assessment year. Methodist Old People's Home v. Korzen, 39 Ill.2d 149, 156 (1968) (hereinafter "Korzen").

The ownership question hinges on whether applicant qualifies as an "institution of public charity" within the meaning of Section 200/15-65. That inquiry initially requires that one

recognize the following definition of "charity," first articulated in Crerar v. Williams, 145 Ill. 625, 643 (1893):

... a charity is a gift to be applied consistently with existing laws, for the benefit of an indefinite number of persons, persuading them to an educational or religious conviction, for their general welfare - or in some way reducing the burdens of government.

The Korzen court supplemented this definition by noting that all "institutions of public charity":

- 1) have no capital stock or shareholders;
- 2) earn no profits or dividends, but rather, derive their funds mainly from public and private charity and hold such funds in trust for the objects and purposes expressed in their charters;
- 3) dispense charity to all who need and apply for it;
- 4) do not provide gain or profit in a private sense to any person connected with it; and,
- 5) do not appear to place obstacles of any character in the way of those who need and would avail themselves of the charitable benefits it dispenses.

Korzen, *supra*, at 157.

The above characteristics are not rigid requirements, but rather guidelines to be considered with an overall focus on whether the applicant serves the public interest and lessens the State's burden. DuPage County Board of Review v. Joint Comm'n on Accreditation of Healthcare Organizations, 274 Ill. App.3d 461, 466 (2<sup>nd</sup> Dist. 1995). Thus, in reviewing the instant record, I note that: (1) membership in the Society is open to anyone interested in the history of the Rogers Park and Westridge areas; (2) applicant assesses membership fees but waives payment thereof in cases of financial need; (3) the Society's museum is open to the public free of charge, except that it requests that patrons place any contributions they wish to make into



a donation box located in the main foyer; and (4) applicant does not refuse to admit those who decline to make such contributions.

Under these circumstances, it appears that applicant's only barriers to exempt status are its membership dues and contribution requests. Such payments could be considered financial "obstacles" that applicant places in the way of those who need and would avail themselves of the benefits that the Society dispenses. However, imposing such dues or requesting such contributions does not, *ipso facto* cause an otherwise "charitable" organization to forfeit its exempt status provided that the purported "charity" admits or offers services to those who seek any benefits offered but cannot afford to pay the customary dues or contributions. Small v. Pangle, 60 Ill.2d 510, 518 (1975).

The testimony of applicant's president, David Torrey, at Tr. pp. 45-46, establishes that the Society makes appropriate accommodations for those who can not afford to pay the membership fees or contributions. His testimony further proves that applicant provides such persons with equal access to the museum's resources vis-a-vis those who can afford to pay membership dues and make other financial contributions. For all the preceding reasons, and because the record establishes that applicant satisfies the remaining criteria set forth in Korzen, supra, I conclude that the Society qualifies as an "institution of public charity," and therefore, satisfies the ownership requirement articulated in Section 200/15-65.

Analysis of the charitable use requirement begins with recognition of the fundamental principle that the word "exclusively," when used in Section 200/15-65 and other exemption statutes, means "the primary use for which property is used and not any secondary or incidental purpose." Gas Research Institute v. Department of Revenue, 145 Ill. App.3d 430 (1987); Pontiac Lodge No. 294, A.F. & A.M. v. Department of Revenue, 243 Ill. App.3d 186 (1993).

Thus, it is the primary use of real estate, rather than its incidental use or uses, that determines tax exempt status. Illinois Institute of Technology v. Skinner, 49 Ill.2d 59 (1971), (hereinafter "IIT").

These principles are well-established but subject to variable applications in the following "distinct situations":

First is the case where the property as a whole, or in unidentifiable portions is used both for an exempting purpose and a non-exempting purpose. The property will be wholly exempt only if the former use is primary and the latter is merely incidental. [citations omitted]. In the second situation, an identifiable portion of the property may be exempt, while the remainder is taxable if it is a substantial rather than incidental portion of the property and is used for a non-exempting purpose or not at all. [citations omitted].

IIT at 66.

The IIT court applied these principles to a record which established that only a portion of the 107-acre tract under consideration was actually used for exempt educational purposes. It exempted that specific portion and held that "[w]here a tract is used for two purposes, there is nothing novel in exempting the part used for an exempt purpose and subjecting the remainder to taxation." *Id.* at 64.

This record discloses that the subject property was used for two basic purposes throughout the 1996 assessment year. One was connected with a historical museum that applicant operated on specifically identifiable portions of the subject property. The other was associated with specifically identifiable studios that applicant rented to practicing artists.

These latter uses would not qualify as exempt, for applicant presented no evidence establishing that the artist/tenants were exempt entities using the leaseholds for purposes that would qualify as exempt if the lessees held ownership interests in their respective leaseholds. *See, Children's Development Center v. Olson*, 52 Ill.2d 332 (1972) (hereinafter "Olson") (charitable organization's leasehold interest held exempt where evidence established that lessor was an exempt religious organization and tenant used the leasehold exclusively in furtherance of

its beneficent purposes). Rather, the leases (Applicant Ex. No. 14A, 14B) and supporting testimony (Tr. p. 41), suggest that all of the tenants were practicing artists who used the demised portions of the subject property to further their respective professional interests. Therefore, all portions of the subject property so used, including the entirety of: (1) Studio 1, parts A and B; (2) Studio 4; (3) Studio 5; (4) of Studio 7; (5) Studio A; (6) Studio B; (7) Studio C; (8) Studio D-1; (9) Studio D-2; (10) Studio E, Part 1; (11) Studio E, Part 2; (12) Studio F, should not be exempt from 1996 real estate taxes under Section 200/15-65 of the Property Tax Code.

With respect to the remaining space, it is noted that the Archival Room or Studio 3 was used for two purposes. Although one use was connected with providing a workshop area for applicant's museum, the other centered around the non-exempt leasing functions described above. In such circumstances, IIT, *supra*, mandates that the primary use will govern unless specifically identifiable exempt uses can be attributed to specifically identifiable portions of this particular part of the subject property.

This record does not contain such evidence, for neither the leases nor any other evidence of record place any type of space restrictions on the lessee. Nor do they expressly reserve any of the space contained in Studio 3 for applicant's own uses. Absent such restrictions or reservations, I am unable to discern whether the applicant or the lessee was the primary user of Studio 3 throughout the assessment year currently in question. For this reason, and because all doubts and debatable questions must be resolved in favor of taxation (*see, supra* at p. 14), applicant has failed to clearly and convincingly prove that Studio 3 was in exempt use during the 1996 tax year.

The Society has, however, sustained its burden of proof with respect to those areas of the subject property used for museum-related activities. These areas include not only the museum proper, (which is contained in parts one and two of Studio 2), but also the educational resource center located in Studio 2, Room 3.

The exempt areas additionally include the entirety of the basement<sup>9</sup> and following areas of the first floor: (1) the South Hallway, Front Area; (2) the Window Display; (3) the Office or Studio 6; (4) the First and Second Parts of the South Hallway, Back Area; (5) Bathrooms 1 and 2; (6) the North Entrance Hall; (7) the North Hallway; and (8) the Area Under the North Stairway. Exempt areas on the second floor are, however, limited to: (1) the Gallery; (2) the North Hallway; (3) Bathrooms 3 and 4; (3) the Storage Room; and (4) the Cleanup Room.

Each of these areas occupies a specifically identifiable area of the 7,868 square foot building located on the subject property. Therefore, IIT, *supra*, mandates that the precise amount of exempt square footage is as follows:

<b>EXEMPT AREA</b>	<b>SQUARE FOOTAGE</b>
<b>First Floor</b>	
South Hallway - Front Area	183
Studio 2, Room 1	342
Studio 2, Room 2	238
Studio 2, Room 3	160
Window Display	31
Office (Studio 6)	336
<b>EXEMPT AREA (CONT'D)</b>	<b>SQUARE FOOTAGE</b>
South Hallway Back Area, First Part	106
South Hall- Back Area, Second Part	16
Back Room, First Part	152
Back Room, Second Part	31
Bathroom 1	18
Bathroom 2	18
North Entrance Hall	201
North Hallway	308
Under North Stairway	32
<b>Total Exempt Area On First Floor</b>	<b>2,172</b>
<b>Total Square footage of First Floor</b>	<b>3,388</b>
<b>Total Percentage of Exempt Square Footage on First Floor (2,172/3,388 = .6411 (rounded)) or</b>	<b>64%</b>
<b>Second Floor</b>	
Gallery	456
North Hallway	114

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9. This and all of the above-listed areas may not have been used for actual museum purposes during the 1996 assessment year. They were, nevertheless, in exempt use during that time because said areas were utilized for storage and other related ends that were "reasonably necessary" to fulfill the museum's overall charitable purpose. *See, Evangelical Hospitals Corporation v. Department of Revenue*, 233 Ill. App.3d 225 (2nd Dist. 1991); *Memorial Child Care v. Department of Revenue*, 238 Ill. App.3d 985 (4th Dist. 1992).

Storage Room	66
Cleanup Room	25
Bathroom 3	25
Bathroom 4	27
<b>Total Exempt Area On Second Floor</b>	<b>713</b>
<b>Total Square footage of Second Floor</b>	<b>3,280</b>
<b>Equals Total Percentage of Exempt Square Footage on Second Floor (<math>713/3,280 = .2173</math> (rounded)) or</b>	<b>22%</b>
<b>Basement (Totally Exempt)</b>	<b>1,200</b>
<b>Total Amount of Exempt Square Footage in Building As a Whole (<math>2,172+713+1,200</math>) or</b>	<b>4,085</b>

Computations for the building as a whole are as follows:

<b>EXEMPT AREA</b>	<b>SQUARE FOOTAGE</b>
<b>Total Amount of Exempt Square Footage in First Floor, Basement and Second Floor</b>	<b>4,085</b>
<b>Total Amount of Square Footage in Entire Building</b>	<b>7,868</b>
<b>Equals Total Percentage of Exempt Square Footage in Entire Building (<math>4,085/7,868 = .5192</math> (rounded)) or</b>	<b>52%</b>

In summary, the Department's original determination in this matter, issued August 14, 1997, was based on an incorrect application of Public Act 89-426 with respect to the 1996 tax year. Therefore, said misapplication constituted a legally insufficient basis for denying the subject property exemption from 1996 real estate taxes under Section 200/15-65 of the Property Tax Code. However, the preceding analysis demonstrates that: (1) applicant qualifies as an "institution of public charity" within the meaning of Section 200/15-65; and, (2) "actually and exclusively" uses the above-identified portions of the subject property for exempt purposes. Therefore, the Department's initial determination should be modified to reflect that 52% of the building and a corresponding percentage of its underlying ground are exempt from 1996 real estate taxes.

WHEREFORE, for all the above-stated reasons, it is my recommendation that 4,085 square feet (or 52%) of the 7,868 square-foot building located on real estate identified by Cook County Parcel Index Number 10-36-431-020, and a corresponding percentage of its underlying land, be exempt from 1996 real estate taxes.

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Date

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Alan I. Marcus  
Administrative Law Judge